

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Application of)
)
EASTERN NEW MEXICO UNIVERSITY)
)
For Renewal of License for)
Instructional Television Fixed Service Station)
WLX261, Elida, New Mexico)

ORDER

Adopted: February 14, 2003

Released: February 18, 2003

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:¹

1. *Introduction.* On August 23, 2002, Eastern New Mexico University (ENU) filed an application to renew Instructional Television Fixed Service (ITFS) Station WLX261, Elida, New Mexico.² Because ENU's license to operate Station WLX261 expired on October 26, 2000, ENU requested a waiver of the applicable provision of the Commission's Rules³ governing the filing of ITFS renewal applications.⁴ On August 23, 2002, ENU concurrently filed a request for Special Temporary Authority (STA) to continue operating Station WLX261.⁵ For the reasons discussed below, we deny the waiver request, dismiss the renewal application, and grant ENU STA to operate Station WLX261 through June 30, 2003.

2. *Background.* On May 14, 1990, ENU filed an application to construct and operate a new ITFS station on the C group channels in Elida, New Mexico.⁶ The application was granted under call sign WLX261 on October 26, 1990 for a ten-year license term,⁷ subject to the condition that construction

¹ Effective March 25, 2002, the Commission transferred regulatory functions for the Instructional Television Fixed Service and the Multipoint Distribution Service/Multichannel Multipoint Distribution Service from the Mass Media Bureau to the Wireless Telecommunications Bureau (Bureau). Radio Services Are Transferred from Mass Media Bureau to Wireless Telecommunications Bureau, *Public Notice*, 17 FCC Rcd 5077 (2002). Accordingly, the Bureau's Public Safety and Private Wireless Division assumed all regulatory duties associated with these services effective March 25, 2002. *Id.*

² See FCC Form 330-R of Eastern New Mexico University (filed Aug. 23, 2002) (Renewal Application).

³ See 47 C.F.R. § 74.15(e).

⁴ See Letter from Jeff Burmeister, Director of Engineering, Eastern New Mexico University, to Ruth Taylor, Chief, Microwave Section, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, FCC (dated Aug. 21, 2002; filed Aug. 23, 2002) (Waiver Request).

⁵ See Letter from Jeff Burmeister, Director of Engineering, Eastern New Mexico University, to Albert Knerr, Chief, Technical Analysis Section, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, FCC (dated Aug. 22, 2002; filed Aug. 23, 2002) (STA Request).

⁶ See FCC File. No. BPIF-19000514DA (filed May 14, 1990) (application).

⁷ See 47 C.F.R. § 74.15(e) (stating that ITFS licenses are issued for a period of ten years beginning with the date of grant).

of the facilities be completed by April 26, 1992. ENU timely constructed the facilities. However, on October 26, 2000, the license for Station WLX261 expired. On August 23, 2002, ENU filed the instant renewal application, waiver request, and STA request.⁸

3. *Discussion.* An ITFS licensee must file a renewal application “not later than the first day of the fourth calendar month prior to the expiration date of the license sought to be renewed.”⁹ The Commission issues ITFS licenses for a period of ten years beginning with the date of grant.¹⁰ ENU’s license for Station WLX261 expired on October 26, 2000. ENU’s only explanation for not timely filing an application to renew its license to operate Station WLX261 is that it did not receive a renewal reminder from the Commission “through normal channels.”¹¹ According to ENU, it realized that Station WLX261’s authorization expired during a recent review of its licenses.¹² ENU seeks a waiver of Section 74.15(e) of the Commission’s Rules to permit the untimely filing of the renewal application.¹³ ENU contends that a waiver is warranted because it provides instructional and educational programming on a daily and continuous basis to Elida Public Schools and other educational and instructional institutions.¹⁴ ENU argues that a lapse in operations of this station will cause a serious interruption to the services it provides to students receiving these services.¹⁵

4. *Waiver Request.* Based on the record before us, we find that ENU has not met its burden of demonstrating that grant of a waiver is warranted under the circumstances presented. “An applicant for waiver faces a high hurdle even at the starting gate. ‘When an applicant seeks a waiver of a rule, it must plead with particularity the facts and circumstances which warrant such action.’”¹⁶ In this matter, ENU only states that it seeks a waiver of Section 74.15(e) because it did not receive a renewal reminder from the Commission “through normal channels.”¹⁷ A licensee’s obligation to file a timely renewal application is not dependent upon the Commission sending a renewal reminder to the licensee. Rather, it is the responsibility of each licensee to renew its license prior to expiration.¹⁸ Therefore, even if ENU failed to receive a renewal reminder, it was expected to know the term of its license and to file a timely renewal application.¹⁹ Consequently, we find that ENU’s failure to file a timely renewal application for Station

⁸ ENU raises the same arguments in both the waiver request and the STA request.

⁹ 47 C.F.R. § 74.15(e).

¹⁰ *Id.*

¹¹ See Waiver Request; STA Request.

¹² See Waiver Request; STA Request.

¹³ Waiver Request.

¹⁴ *Id.*

¹⁵ See Waiver Request; STA Request.

¹⁶ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968) (*per curiam*)).

¹⁷ Waiver Request.

¹⁸ See, e.g., Daniel R. Goodman, Receiver, Dr. Robert Chan, Petition for Waiver of Sections 90.633(c) and 1.1102 of the Commission’s Rules, *Memorandum Opinion and Order on Reconsideration*, 13 FCC Rcd 21944 (1998); First National Bank of Berryville, *Order*, 15 FCC Rcd 19693 (WTB PSPWD 2000).

¹⁹ Pursuant to Section 74.15(e) of the Commission’s Rules, an ITFS licensee must file a renewal application “not later than the first day of the fourth calendar month prior to the expiration date of the license sought to be (continued....)

WLX261 for the proffered reason does not provide a sufficient basis for granting a waiver of Section 74.15(e) of the Commission's Rules.

5. *Renewal Application.* For the reasons discussed above, we deny ENU's request for waiver of Section 74.15(e) of the Commission's Rules. Absent a waiver, Section 74.15(e) of the Commission's Rules precludes ENU's untimely filing of an application to renew Station WLX261. We therefore dismiss the renewal application as defective.

6. *STA.* We, however, find that the immediate termination of the educational and instructional programming provided by Station WLX261 to students in the area would not be in the public interest. Rather, the public interest would be best served by granting ENU limited STA to continue operating the facilities licensed under Station WLX261 through June 30, 2003. The purpose of this STA is to allow ENU to continue to operate its facilities while it makes alternative arrangements for delivering its educational and instructional programming in the future. Upon expiration of the STA, ENU shall cease all operations of Station WLX261. Any continued operation following the expiration of the STA will be unauthorized in violation of Section 301 of the Communications Act of 1934, as amended.²⁰ Therefore, if ENU wishes to continue to provide educational and instructional programming to those students currently served by Station WLX261, it should make other appropriate arrangements for the carriage of such programming.

7. *Conclusion.* For the reasons discussed above, we deny ENU's request for waiver of Section 74.15(e) of the Commission's Rules. We therefore dismiss the renewal application as defective. However, we will permit ENU to operate pursuant to an STA through June 30, 2003.

8. *Ordering Clauses.* Accordingly, IT IS ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 74.15(e) of the Commission's Rules, 47 C.F.R. § 74.15(e), the Request for Waiver of Section 74.15(e) of the Commission's Rules filed by Eastern New Mexico University on August 23, 2002 IS DENIED.

9. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 74.15(e) of the Commission's Rules, 47 C.F.R. § 74.15(e), the application for renewal of license of Station WLX261, Elida, New Mexico, filed by Eastern New Mexico University on August 23, 2002 IS DISMISSED.

10. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 73.1635 of the Commission's Rules, 47 C.F.R. § 73.1635, the request for special temporary authority filed by Eastern New Mexico University on August 23, 2002 IS GRANTED through June 30, 2003 subject to the terms and conditions set forth herein.

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renewed." 47 C.F.R. § 74.15(e). Section 74.15(e) also specifies that an ITFS license is issued for a period of ten years beginning with the date of grant. *Id.* ENU's license for Station WLX261 expired on October 26, 2000. ENU was therefore required to have filed its renewal application by June 1, 2000.

²⁰ 47 U.S.C. § 301. In this respect, we note that ENU filed the instant waiver request and renewal application nearly two years after the license for Station WLX261 expired. The continued operation of Station WLX261 during this period was unauthorized. As a result, we note that our action here is without prejudice to future enforcement action for such unauthorized operation.

11. These actions are taken under designated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau